

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Establish	)	MB Docket No. 03-185
Rules for Digital Low Power Television,	)	
Television Translator, and Television	)	
Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

**Comments of QUALCOMM Incorporated**

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## Summary

QUALCOMM Incorporated, a soon-to be licensed, winning bidder of 5 D Block licenses in Auction 49, is strongly opposed to the Federal Communications Commission's proposal to authorize digital Low Power Television stations in the Lower 700 MHz Band spectrum (698-746 MHz). QUALCOMM believes the proposal, made in the August 2003 Notice of Proposed Rulemaking in MB Docket No. 03-185, is an ill-conceived notion, based on a faulty premise, that will waste millions of dollars on LPTV stations that will have to cease operating when new primary services are available. In addition, adoption of the proposal is likely to delay and impair the provision of innovative, exciting new services to the American people.

The *NPRM* reflects an enthusiasm for licensing new digital operations in the Lower 700 MHz Band that is inconsistent with the cautious, measured approach taken by the Commission in the 2002 *Lower 700 MHz Order*. There, the Commission appropriately recognized the dangers inherent in such a licensing scheme and warned LPTV operators that, as secondary licensees, they may have to cease operations sooner, rather than later. Here, the Commission suggests that LPTV stations may have to cease operations later, rather than sooner, particularly in rural areas. This change in approach is not supported by any rationale in the *NPRM* and is not supported by evidence of any lack of penetration of the DTV signal. In other words, the *NPRM* proposes a shift in attitude, to the detriment of Lower 700 MHz licensees, with no reason.

Furthermore, the *NPRM* argues that there will be no harm to new primary licensees because the LPTV operations will be secondary and must cease operations immediately if they cause interference, something unlikely to happen in the near future, particularly in rural areas. This is a mistaken notion because new primary licensees in the 700 MHz Band are very likely to begin deployment of their services in rural areas, where there are fewer free service TV stations

to block the Lower 700 MHz licensees from starting service. Further, the *NPRM* proposes no interference protection criteria for Lower 700 MHz licensees, but does provide such criteria for other licensees. This disparate treatment of similarly situated licenses is a fatal flaw in the *NPRM*. Moreover, as a practical matter, primary status does not mean that expenditures of time and money will not be required to clear the spectrum for the new services proposed by the 700 MHz licensees.

Finally, QUALCOMM opposes the proposal because it is a serious mistake, as a policy matter, to induce LPTV operators to invest in equipment and facilities that will be unusable in the near future. The Commission is apparently unaware of the efforts of new 700 MHz licensees to bring their services to the public. A new organization, the 700 MHz Advancement Coalition, has been formed to promote policies that will facilitate the rapid and effective delivery of services in this spectrum. Primary operators have begun planning for rapid deployment of services, particularly in the rural areas that the *NPRM* finds so attractive for LPTV operations.

For these reasons, QUALCOMM Incorporated strongly opposes authorization of LPTV stations in the 700 MHz spectrum.

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**Comments of QUALCOMM Incorporated**

QUALCOMM Incorporated ("QUALCOMM") by its attorneys, hereby submits these comments to the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding. QUALCOMM strongly opposes the proposal in the Notice of Proposed Rulemaking to allow use of the Lower 700 MHz spectrum by digital Low Power Television ("LPTV") stations. It is an ill-conceived notion, based on a faulty premise, that could induce LPTV licensees to waste millions of dollars on LPTV stations that will have to cease operating when new primary services are available. In addition, adoption of the proposal is likely to delay and impair the provision of innovative, exciting new services to the American people.

For these reasons, QUALCOMM asks that the Commission not authorize digital LPTV stations to operate in the 700 MHz band.<sup>1</sup>

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<sup>1</sup> These comments specifically address digital LPTV operations in the Lower 700 MHz Band. However, QUALCOMM also opposes authorization of digital LPTV operations in the Upper 700 MHz Band as well.

## I. INTRODUCTION

### A. QUALCOMM's Interest in this Proceeding

The Commission has recently announced that it is prepared to grant QUALCOMM's application for 5 D Block licenses (Channel 55) awarded in the recent Auction No. 49.<sup>2</sup> QUALCOMM expects, therefore, to shortly become a licensee in the 698-746 MHz spectrum ("Lower 700 MHz Band" or "Channels 52-59"). As a Lower 700 MHz licensee, QUALCOMM is interested in the relocation of existing television operations to the "core spectrum" (TV Channels 2-51) so that QUALCOMM can use the spectrum it won at auction. The Commission has decided that this spectrum has the potential "to make a variety of technologies and services available for flexible use, including, fixed, mobile, and broadcast services."<sup>3</sup>

QUALCOMM is eager to begin providing innovative services in the Lower 700 MHz Band, but we are aware of the complex difficulties associated with the reclamation of the spectrum. We recognize that, in some areas, to be sure of interference free operation, the new Lower 700 MHz Band licensees must wait for clearing of the Band before beginning operations. Band-clearing is complicated by the ongoing, lengthy transition to Digital Television ("DTV") operations. Although Congress has established a firm date by which the Lower 700 MHz Band should be free of TV operations (December 31, 2006), the date can be extended, on a market-by-market basis, if the transition to DTV has not met certain milestones.<sup>4</sup>

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<sup>2</sup> FCC Public Notice, *Wireless Telecommunications Bureau Announces it is Prepared to Grant Lower 700 MHz Band Licenses Upon Full and Timely Payment*, DA 03-3548, November 6, 2003.

<sup>3</sup> *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022 at para. 66 (2002) ("Lower 700 MHz Order").

<sup>4</sup> See 47 U.S.C. § 309(j)(14).

The participants in Auctions 44 and 49 were aware of these difficulties and made certain allowances in bidding strategies to accommodate them. But QUALCOMM and others, in making their bids, relied on the Commission's heretofore firm commitment to clearing the band of TV operations and hastening the provision of new services by Lower 700 MHz licensees.

However, our reliance has proven misplaced. In August 2003, the Commission released a Notice of Proposed Rulemaking ("*NPRM*") that would allow – and even encourage – the continuation of TV operation on Channels 52-59.<sup>5</sup> This *NPRM* proposes to allow digital Low Power Television ("LPTV") stations to operate on this spectrum for the foreseeable future, on a secondary basis. QUALCOMM is strongly opposed to this proposal and asks the Commission not to introduce digital LPTV operations or allow indefinite use of the Lower 700 MHz Band by LPTV operators. The notion in the *NPRM* that many years will pass before 700 MHz licensees can use the spectrum they gained in Auctions 44 and 49 is incorrect. Many new licensees, including QUALCOMM, are making plans to provide service sooner, rather than later, especially in rural areas, where most of the spectrum is unencumbered by full service TV stations. The introduction of digital LPTV in the Band is likely to cause new, unforeseen delays in the deployment of new services, a deployment the Commission has previously encouraged. Moreover, given that the proposal would limit LPTV service to secondary status, additional investment in LPTV operations in Channel 52-59 is likely to be a waste of money, especially for the LPTV operators. Adoption of the *NPRM*'s proposal will likely cause substantial delays in the introduction of new services and will induce LPTV licensees to waste millions of dollars on soon-to-be obsolete stations. The *NPRM*'s proposal is, therefore, not in the public interest.

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<sup>5</sup> *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, FCC 03-198, rel. August 29, 2003 ("*NPRM*").

## **B. The Notice of Proposed Rulemaking**

The *NPRM* seeks “to provide flexible and affordable opportunities for low power digital service both through the digital conversion of existing analog service and, *where spectrum is available*, new digital stations.”<sup>6</sup> The Commission has characterized the *NPRM* as “an important step toward bringing digital TV service to Rural America.”<sup>7</sup> QUALCOMM applauds the Commission’s goal, but is fearful that it may have lost sight of the important caveat “*where spectrum is available*” in its rush to authorize digital LPTV service. In short, spectrum is not available in the Lower 700 MHz Band. It has been auctioned to, and will soon be used by, the Lower 700 MHz licensees.

Before discussing the merits of the Commission’s proposals, and the reasons for QUALCOMM’s opposition, it is helpful to review the *NPRM* itself. The *NPRM* first describes the three types of LPTV stations:

1. **LPTV Stations:** These were created to bring television service, including local service, to unserved or underserved communities. LPTV stations, of which there are about 2100 nationwide, may originate programming or they may retransmit programs of full-service TV stations. They operate at reduced power levels (in the Lower 700 MHz Band, at 150 kilowatts) and may be the only TV station providing local news and weather in a given community. Often they air “niche” programming aimed at special interest groups.<sup>8</sup>

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<sup>6</sup> *NPRM* at para 1.

<sup>7</sup> FCC Press Release, *FCC Begins Process to Bring Digital TV to Rural America*, 2003 FCC LEXIS 4446, August 6, 2003.

<sup>8</sup> See *NPRM* at para 4.

2. **TV Translator Stations:** These are stations that receive the signal of a television station and simultaneously retransmit it on another channel. They are intended to provide service where direct reception is unsatisfactory, often in the western regions of the country. There are about 4,700 TV Translator Stations. Translator Stations may not originate programming, except for emergency warnings and public service announcements.<sup>9</sup>
3. **TV Booster Stations:** These are stations which “fill in” service within the Grade B contours of full service TV stations. They simultaneously retransmit the programming of full service stations, may be licensed only to full service licensees and may broadcast only within the service contour of their full service station, and on the same channel.<sup>10</sup>

In addition to these three main kinds of LPTV stations, there is another variety, the Class A Television Station. The Community Broadcasters Protection Act of 1999 (“CBPA”), Section 336(f) of the Communications Act, directed the Commission to establish a “Class A” television service to:

Ensure that many communities across the nation will continue to have access to free, over-the-air low power television (LPTV) stations, even as full service television stations proceed with their conversion to digital format.<sup>11</sup>

Congress recognized the uncertain future of LPTV and provided for some measure of security by providing for “primary” license status for Class A stations, provided they can

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<sup>9</sup> See *NPRM* at para 6.

<sup>10</sup> See *NPRM* at para 8. Because booster stations must broadcast on the same channel as their full-service “host” station, they will not be licensed outside of the core spectrum after the DTV transition is over.

<sup>11</sup> *Intellectual Property and Communications Omnibus Reform Act of 1999*, Conference Report No. 106-464, November 9, 1999 at 149.

demonstrate “that they provide valuable programming to their communities.”<sup>12</sup> However, Section 336(f)(6) precludes the Commission from granting Class A licenses, and primary status, to stations operating in the Lower 700 MHz Band, except for certain qualifying stations temporarily operating on these channels.<sup>13</sup>

The distinction between “primary” and “secondary” service is an important element of Commission policy making and runs throughout the *NPRM*. Secondary stations may not cause interference to, and must accept interference from, primary services. All LPTV stations, except for approximately 600 Class A Stations, are secondary. All new Lower 700 MHz licensees are primary. In other words, LPTV stations may not interfere with, and must accept interference from Lower 700 MHz licensees.

The principal concern of QUALCOMM, and other Lower 700 MHz Band licensees, is the *NPRM*’s tentative conclusion regarding channel assignment. The Commission proposes to allow use of VHF Channels 2-13 and UHF Channels 14-59 for both on-channel analog-to-digital conversions and new digital LPTV and TV translator operations.<sup>14</sup> The Commission, of course, requires that these stations, as “secondary” providers, operate on a non-interfering basis to primary users. Thus, according to the Commission, “digital LPTV and TV translator operations would not preclude or impede service from DTV stations or new primary services.”<sup>15</sup>

In particular, the Commission seeks comment on the use of Channels 52-59, the Lower 700 MHz Band. It is apparent that the Commission recognizes the controversial nature of allowing indefinite use of the Lower 700 MHz Band. It defends its decision not to

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<sup>12</sup> *Id* at 151.

<sup>13</sup> *Id* at 153.

<sup>14</sup> *NPRM* at Para 28.

<sup>15</sup> *Id*.

geographically restrict or preclude LPTV applications on Channels 52-59 on grounds that use of these channels “would facilitate the digital conversion of existing low power service,” “particularly in rural areas where new wireless and other primary services may not operate in the near future.”<sup>16</sup> The Commission asks for comment on this proposal and, alternatively, whether it should permit use of Channels 52-59 “only when applicants could demonstrate that no lower channels are available for digital operation.”<sup>17</sup>

After proposing that LPTV operations be permitted, on a secondary basis, on Channels 2-13 and 14-59, the *NPRM* then turns to the standards for interference protection. It describes the protected signal contours for LPTV and TV translator stations against later authorized LPTV and TV translator stations.<sup>18</sup> It describes the interference prediction criteria for full-service broadcast protection, and notes that LPTV applicants presently must satisfy those criteria before their applications may be accepted.<sup>19</sup> The *NPRM* then discusses relative merits of alternative interference prediction methods: the contour protection approach and the Longley-Rice Propagation Methodology, presently used in DTV interference analysis.<sup>20</sup> It seeks comment on whether the DTV model should be adopted for use in analyzing LPTV interference.<sup>21</sup>

After 23 paragraphs discussing interference protection for broadcast stations, the *NPRM* devotes 3 paragraphs to protection of “Land Mobile Radio and Other Primary Services.” It states that it does not propose to alter the interference priorities and remediation provisions in Section 74.703 of the rules, which provide that applications for LPTV stations will not be accepted

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<sup>16</sup> *Id* at para 29.

<sup>17</sup> *Id.*

<sup>18</sup> *NPRM* at paras 31-33.

<sup>19</sup> *NPRM* at paras 34-37.

<sup>20</sup> *NPRM* at 41-49.

<sup>21</sup> *NPRM* at 46.

where it is apparent that interference will be caused.<sup>22</sup> It also discusses protection afforded land mobile stations on Channels 14-20 in Section 74.709 of the Rules and asks for comment on whether these standards should be applied to digital LPTV operations.<sup>23</sup> The *NPRM* does not discuss, or request comment on, interference protection for new licensees in the Lower 700 MHz Band, Channels 52-59.

In sum, the *NPRM* appears to reflect enthusiasm for digital LPTV operations, at the expense of new Lower 700 MHz licensees. While QUALCOMM does not quarrel with the effort to assure that rural and other communities are able to enjoy opportunities for digital television, QUALCOMM believes it would be a serious error to make Lower 700 MHz spectrum available, even on a secondary basis, to new digital Low Power Television stations, as well as to any additional analog LPTV stations.

## **II. THE COMMISSION SHOULD NOT MAKE LOWER 700 MHZ SPECTRUM AVAILABLE TO DIGITAL OR ANALOG LPTV STATIONS.**

### **A. The *NPRM* Proposals are Inconsistent with Prior Commission Statements.**

The *NPRM*'s "high priority" proposal to move LPTV to digital operation using the Lower 700 MHz Band spectrum is glaringly different from, and inconsistent with, the cautious, measured approach to LPTV operation in that spectrum taken earlier by the Commission. In the January 2002 *Lower 700 MHz Order* reallocating spectrum and establishing service rules for the Lower 700 MHz Band, the Commission clearly signaled its view that LPTV operations were incompatible with new Lower 700 MHz services. Although the Commission decided to allow analog LPTV stations to operate in the Band on a secondary basis, the Commission warned that

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<sup>22</sup> *NPRM* at para 58.

<sup>23</sup> *NPRM* at para 59.

LPTV Operators must be prepared to cease service once television Channels 52-59 are reclaimed.<sup>24</sup>

The Commission noted that, as Congress has recognized,

Not all LPTV stations can be guaranteed a future due to the emerging DTV service, and *we do not think it is advisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band.*<sup>25</sup>

In the *Lower 700 MHz Order*, the Commission took a measured approach that specifically recognized that LPTV operations would not be able to continue to operate indefinitely on Channels 52-59. Repeatedly, the Commission warned LPTV operators that “a primary licensee can initiate service in the band” which will have the effect of causing LPTV stations to cease operation.<sup>26</sup> Certainly, the language of the *Lower 700 MHz Order* would give pause to any LPTV operator with a license on Channels 52-59. The message was clear: LPTV operators must be prepared to abandon Channels 52-59. Further, the message had a note of urgency to it. The Commission warned that LPTV operators must be prepared for new licensees in the 700 MHz Band as early as September 30, 2002, regardless of whether “the band as a whole will be recovered at an early or late stage of the DTV transition.”<sup>27</sup>

The *Lower 700 MHz Order* gave fair warning to LPTV operators that they could not expect to provide service on these channels indefinitely. Although the Commission rejected the idea of simply not accepting applications for Channels 52-59, it retained the discretion to restrict or preclude such applications.<sup>28</sup>

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<sup>24</sup> *Lower 700 MHz Order* at para 28.

<sup>25</sup> *Id* (*emphasis added*).

<sup>26</sup> *Id* at para 30.

<sup>27</sup> *Id* at n. 92.

<sup>28</sup> *Id* at para 47.

Contrast this measured approach with the “gung-ho” enthusiasm of the present *NPRM* where the Commission proposes not only to allow continued analog operation, but *invites* new digital stations to join the Band. The *NPRM* proposes to aggravate the very problems it identified earlier, by adding digital stations operating in the Lower 700 MHz Band. Moreover, the *NPRM* is vague on the question of how long such stations can expect to operate in the Lower 700 MHz Band. It is implied that LPTV operations can continue beyond December 31, 2006, or any market-by-market end to the DTV transition. There is no warning about the arrival of new licensees whether or not the band as a whole is recovered at any particular time.

This incompatibility of tone and temperament between the *Lower 700 MHz Order* and the *NPRM* appears to reflect a change in the Commission’s commitment to the reclamation of the Lower 700 MHz Band, in favor of a commitment to digital LPTV. The Lower 700 MHz licensees based their auction participation in part on their understanding of the Commission’s commitment as expressed in the *Lower 700 MHz Order*. It is extremely disheartening to see that commitment change, without any explanation of the necessity for doing so.

Indeed, lacking from the *NPRM* is any analysis of the need for digital LPTV. The Commission simply assumes that “[t]ranslators and LPTV stations will play a significant role in furthering the transition to digital television” without considering any evidence to support that claim<sup>29</sup>. Recent reports suggest that DTV transmissions can currently be received in 201 television markets representing 99.7% of the total U.S. television households.<sup>30</sup> One can only assume that the “significant role” the *NPRM* has in mind is the missing 0.3%. Failure to

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<sup>29</sup> *NPRM* at para. 1

<sup>30</sup> *NAB News*, September 2, 2003, as quoted in *Reaching the Audience: An Analysis of Digital Broadcast Power and Coverage*, October 17, 2000, Association for Maximum Service Television, Inc.

explain its change in position and failure to provide a convincing rationale for the change are fatal flaws in the Commission's campaign for digital LPTV in the Lower 700 MHz Band.

**B. Secondary Status for LPTV Operators is No Solution**

A constant theme running through the *NPRM* is the notion that because LPTV operators are given secondary status, primary operators such as new Lower 700 MHz operators need not be concerned. But this gives little comfort to 700 MHz licensees for three reasons:

First, the Commission bases its decision to allow LPTV operations in the Lower 700 MHz Band on its mistaken notion that “wireless and other primary services may not operate in the near future”<sup>31</sup> in rural areas. In fact, rural Lower 700 MHz operators may well be among the first licensees to deploy services in the Lower 700 MHz band. Companies such as Whidbey Telephone Company, Agri-Valley Communications, Inc., Pioneer Telephone Cooperative, Valley Telephone Cooperative, Vermont Telephone Company, and others are all licensees, or soon-to-be Licensees in rural areas. Many of these companies are well into the planning stages for use of their licenses. Furthermore, it may be easier to begin to deploy services in rural areas where full service TV stations transitioning to DTV are sparse. Moreover, some services, such as wireless broadband, may be most needed in rural areas. It is incorrect to believe that a rural area will be available for LPTV use simply because it is a rural area.

Second, the *NPRM* proposes *no* interference protection criteria for new Lower 700 MHz licensees. The *NPRM* devotes several paragraphs to protection of LPTV and Class A stations against interference from later authorized LPTV stations.<sup>32</sup> The *NPRM* devotes many paragraphs to protection of broadcast stations against interference from LPTV stations.<sup>33</sup> However, the

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<sup>31</sup> *NPRM* at para 29.

<sup>32</sup> *NPRM* at para 31-33.

<sup>33</sup> *NPRM* at para 34-57.

*NPRM* devotes only three paragraphs to a discussion of protection of “land mobile and other primary services” and offers *no* interference protection criteria applicable to the Lower 700 MHz Band.

This is a critical omission in the *NPRM*. Without effective and clear interference criteria in advance, both LPTV station operators and Lower 700 MHz licensees face the possibility of endless disputes over claims of harmful interference. In other cases, LPTV applications that do not pass a certain interference threshold are simply not accepted for filing. But, when it comes to the Lower 700 MHz Band, the *NPRM* proposes that applications in Channels 52-59 would be accepted without regard for potential interference. Moreover, as a legal matter, providing interference protection criteria for one class of primary service providers and not providing such criteria to another class is disparate treatment of similarly situated parties and thus not lawful.<sup>34</sup> This disparate treatment only serves to underscore our concern that the *NPRM* would allow digital LPTV service to proceed at the expense of Lower 700 MHz licensees.

Third, as a practical matter, the fact that a transmitter is secondary, does not mean that interference could not occur or that reparation will not be costly and time-consuming. Indeed without any effective interference protection criteria *ab initio*, it is likely that interference will occur. The Lower 700 MHz licensee must identify and contact the interfering LPTV station, which is likely to try to avoid immediately ceasing operations. The problem may be complicated if these operations are considered essential by some.<sup>35</sup> The legal nicety of “primary” status could well result in a real world expenditure of time and money, for the Lower 700 MHz licensees and even for the LPTV licensees, with no certainty of immediate satisfaction. The Commission

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<sup>34</sup> See, e.g., *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

<sup>35</sup> See, *NPRM* at para 1. (Viewers in many communities depend on the services of TV translator and LPTV stations for their over-the-air television service”).

implicitly recognizes this by establishing interference protection criteria that LPTV operators must satisfy *before* their applications can be granted. In the case of Lower 700 MHz licensees, no such protection exists.

And, in the case of Lower 700 MHz licensees, such protection is essential because of the extreme difference in power between an LPTV station and a typical mobile service handset or base station. An LPTV transmitter may radiate power up to 150 kilowatts, while a typical CDMA handset typically operates at an average of 10 milliwatts. An LPTV station operating at 150 kilowatts is operating at over 10 million times the power of a CDMA phone. There is no question that an LPTV transmitter will seriously interfere with mobile service operation.

**C. LPTV Use of the Lower 700 MHz Spectrum Is a Serious Policy Mistake.**

In addition to the legal flaws in the *NPRM*, as a policy matter, it is a serious mistake to allow LPTV stations to occupy Channels 52-59, a mistake apparently premised on the notion that primary users of the spectrum will not deploy services in the near future. In making this mistake, the Commission is inducing LPTV operators to spend millions of dollars constructing and operating facilities that will be unusable within a relatively short time. The *NPRM* appears to imply that the DTV transition will take a very long time and that the Lower 700 MHz licensees will wait until it is over before deploying services.

The *NPRM* is just wrong. In some parts of the country service on the Lower 700 MHz spectrum can be deployed immediately. The Commission had it right the first time when it warned LPTV operators to be prepared for new licensees “regardless of whether the band as a whole will be recovered at an early or late stage of the DTV transition.”<sup>36</sup>

Moreover, the Lower 700 MHz licensees have organized an informal organization, the 700 MHz Advancement Coalition, for the promotion of policies that will facilitate the rapid and effective delivery of services in this spectrum. QUALCOMM is pleased to be part of this organization, which will help to speed the use of the Lower 700 MHz Band and the provision of innovative advanced wireless services to consumers.

In addition, at a recent conference in Las Vegas, over 80 Lower 700 MHz licensees met to share their experiences, meet with equipment providers and discuss plans for using the spectrum. It was a very successful event that confirmed QUALCOMM’s view that many Lower 700 MHz licensees are actively planning their spectrum use and expect to deploy services in some parts of their geographic license areas, if not in all. A primary message from the conference was that the Lower 700 MHz licensees, having invested millions of dollars in acquiring spectrum, are now eager to use it and will marshal all available resources to that end.

It is a grave error to invite LPTV operators to occupy spectrum that will be used by primary operators in the relative near term. It will be a waste of time and money on the part of both the LPTV operator – who must eventually abandon the spectrum – and the Lower 700 MHz licensee – who must protect against interference.

In these circumstances, the Commission must abandon its proposal that LPTV operators be allowed to use Channels 52-59 for their digital operations.

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<sup>36</sup> *Lower 700 MHz Order* at n. 92.

### III. CONCLUSION

For the reasons given above, the Commission should reverse the position taken in the *NPRM* and preclude digital LPTV stations from operating in the Lower 700 MHz Band.

Respectfully submitted,

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